



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

500 New Jersey Avenue, NW
Washington, DC 20001-2020

REGULATORY & INDUSTRY
RELATIONS

Joseph M. Ventrone

Managing Director
202.383.1095
Fax 202.383.7568

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Office of the General Counsel
Regulations Division
Room 10276
Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410-0500

COMMENTS RE: DOCKET NO. FR-4831-P-01; HUD 2004-0007

Dear Sir/Madame:

The NATIONAL ASSOCIATION OF REALTORS® (NAR), which represents over 1 million professional real estate practitioners, submits the following comments on the proposed regulations governing revisions to the Single Family Mortgage Insurance Program [Docket No. FR-4831-P-01; HUD 2004-0007, November 10, 2004]. HUD's proposed rule would require that homeowner or condominium association fees be included among the payments that the mortgagor makes under the mortgage.

The proposed rule would require mortgagees of FHA-insured mortgages endorsed on or after the effective date of this rule to collect, as part of the monthly mortgage payment, an escrow for the payment of homeowner or condominium association fees. The current single-family mortgage insurance program permits the payment of taxes and insurance on behalf of the mortgagor for ground rents, taxes, special assessments, flood insurance premiums, fire, and other hazard insurance premiums.

HUD wants to protect the viability of homeowners' and condominium associations by providing a method whereby they are assured that these fees will be paid. HUD asserts that this proposed rule would help protect the solvency of FHA's mortgage insurance fund. The rule would also afford greater protection to those homeowners who do pay their fees from being assessed for maintenance fees and other expenses because other homeowners do not pay their fees.

NAR does not support requiring homeowners and condo association fees to be escrowed in order to obtain an FHA loan. The complexity of staying current with the fees would prove to be impossible to keep straight between the consumer, the management companies and HUD. Some associations are large and corporately managed, while a number of homeowners' and

condominium associations are managed and monitored by a small group of owners who control the billing, collections, oversee the maintenance and enforce special and emergency assessments. Regular assessments can change frequently and regular assessments can be raised higher temporarily for certain purposes.

Also, special assessments are difficult to forecast, and emergency assessments are impossible to forecast. It will be difficult for these associations to keep the mortgage service company up to date on all these matters and it will be extremely difficult to escrow these fees especially if the fees are changing all the time. For example, as new assessments or increases are sent to the homeowner, which usually occur on short notice, the payments may not be posted in a timely and accurate manner because the homeowner will not have had enough time to notify their mortgage companies.

Establishing an escrow for homeowners and condominium fees will also prove costly for the mortgage loan servicers and lenders to administer. They will have to monitor ever changing association fees, policies and procedures, not to mention make monthly or quarterly payments on behalf of their borrowers. Mortgage service companies will also have difficulty managing these escrows due to possible escrow shortages, overages, and special assessments.

The proposed rule could create an administrative nightmare for FHA. Unlike ad valorem taxes and insurance, homeowners' and condominium association fees are often paid monthly or quarterly. If HUD were to impose a requirement that lenders escrow for these fees then the administrative costs could prove prohibitive for the Department as well.

NAR believes that HUD should not try to solve a problem that they are encountering with a small percentage of their mortgagors by imposing requirements that will apply generally. Additional "red tape" could restrict use of the program and impede the salability of properties in various markets. To fulfill their mission of providing homeownership, it would be better for HUD to work at removing obstacles rather than erecting other barriers or disincentives.

If FHA mortgages become more burdensome to lenders because of the proposed escrow requirement, they may feel that it is not in their best interest to originate them. Lenders will view having to escrow for homeowners and condo association fees as another troublesome difference between FHA and the conventional market and steer away from originating loans that are more difficult and more expensive to service. In addition, if HUD were to implement this rule, the mortgage service provider could charge a higher interest rate or other additional charges for having to escrow funds for these types of fees because of the increased work load. The increased costs will eventually be passed on to the consumer.

NAR believes that the payment of homeowners and condominium association fees can be better addressed by imposing stronger qualifying criterion in order to ensure that the borrower can pay their obligations before being approved for FHA financing. The fact that the fees must be paid should be considered in the qualification procedures and the underwriting of the mortgage loan. To maximize the likelihood of these fees being paid, HUD should require disclosure of the fees and the possibility of future increases. Also, HUD and/or FHA mortgagors should require annual

proof that the association is in good financial standing which will prove especially useful when special assessments are required.

NAR believes that the increased costs associated with this proposed rule will make the FHA program less attractive to all concerned and will likely be reflected in diminished originations. NAR believes that homeowners should be accountable to a local homeowners or condominium association and be educated to that effect. In our view, it makes sense to provide consumer awareness and education rather than impose additional requirements on lenders and loan servicers that will only serve to increase the costs of obtaining a loan for the average homeowner. NAR appreciates the opportunity to submit these comments. If we can provide further information, please contact Peter Morgan at 202-383-1233.

Sincerely,



Joseph M. Ventrone
Managing Director